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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NICHOLAS BONTRAGER,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

ALTERNATIVE POWER
SOLUTIONS, INC.; DOES 1-10
Inclusive,

Defendant.

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. §
227, ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1. NICHOLAS BONTRAGER (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of ALTERNATIVE POWER SOLUTIONS, INC. (“Defendant”), in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, (“TCPA”) and related regulations. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and

1 experiences, and, as to all other matters, upon information and belief, including
2 investigation conducted by his attorneys.

3 2. The TCPA was designed to prevent calls and messages like the ones
4 described within this complaint, and to protect the privacy of citizens like Plaintiff.
5 “Voluminous consumer complaints about abuses of telephone technology – for
6 example, computerized calls dispatched to private homes – prompted Congress to
7 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

8 3. In enacting the TCPA, Congress intended to give consumers a choice
9 as to how creditors and telemarketers may call them, and made specific findings
10 that “[t]echnologies that might allow consumers to avoid receiving such calls and
11 messages are not universally available, are costly, are unlikely to be enforced, or
12 place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11.
13 Toward this end, Congress found that

14
15 [b]anning such automated or prerecorded telephone calls to the
16 home, except when the receiving party consents to receiving the
17 call or when such calls are necessary in an emergency situation
18 affecting the health and safety of the consumer, is the only
19 effective means of protecting telephone consumers from this
nuisance and privacy invasion.

20 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
21 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
22 purpose).

23 4. Congress also specifically found that “the evidence presented to the
24 Congress indicates that automated or prerecorded calls are a nuisance and an
25 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also,
26 *Mims*, 132 S. Ct. at 744.

27 5. In a recent decision, the Supreme Court interpreted the term
28 “automatic telephone dialing system” and held that “[t]o qualify as an ‘automatic

1 telephone dialing system,’ a device must have the capacity either to store a
2 telephone number using a random or sequential generator *or* to produce a telephone
3 number using a random or sequential number generator.” *Facebook, Inc. v. Duguid*,
4 141 S.Ct. 1163 (2021) (emphasis added).

5 6. In *Duguid*, the Supreme Court provided an example of such systems,
6 stating: “For instance, an autodialer might use a random number generator to
7 determine the order in which to pick phone numbers from a preproduced list. It
8 would then store those numbers to be dialed at a later time.” *Id.* at 1171-72 fn. 7.

9 7. Further, both *Duguid* and the legislative history of the TCPA are clear
10 that the original focus on prerecorded voice technology prohibition was the fact
11 that such communications involved agentless calls, not on the question of whether
12 a literal voice was used during those agentless calls. *See* Hearing Before the
13 Subcommittee on Communications of the Committee on Commerce, Science and
14 Transportation, United States Senate One Hundred Second Congress First Session
15 July 24, 1992, Testimony of Robert Bulmash and Steve Hamm at pg 11; 7 FCC
16 Rcd. 8752 (F.C.C. September 17, 1992).

17 8. The Sixth Circuit has also recognized this distinction: “Congress drew
18 an explicit distinction between ‘automated telephone calls that deliver an artificial
19 or prerecorded voice message’ on the one hand and ‘calls place by ‘live’ persons’
20 on the other.” *Ashland Hosp. Corp. v. Serv. Employees Int’l Union, Dist. 1199*
21 *WV/KY/OH*, 708 F.3d 737,743 (6th Cir. 2013).

22 9. Similarly, the FTC has observed that “prerecorded calls are by their
23 very nature one-sided conversations, and if there is no opportunity for consumers
24 to ask questions, offers may not be sufficiently clear for consumers to make
25 informed choices before pressing a button or saying yes to make a purchase.” 73
26 FR 51164-01, 51167 (Aug. 29, 2008).
27
28

JURISDICTION AND VENUE

10. Jurisdiction is proper under 28 U.S.C. § 1331 because this action arises under a federal statute, namely the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*

11. Venue is proper in the United States District Court for the Central District of California pursuant to 18 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred within this district.

PARTIES

12. Plaintiff is, and at all times mentioned herein, was a natural individual and resident of the State of California, County of Los Angeles. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153(39). Plaintiff was physically in California at the time he received the alleged phone calls from Defendant.

13. Plaintiff is informed and believes, and thereon alleges, that Defendant is a corporation of the State of California. Defendant, and all of its agents, are and at all times mentioned herein were "persons," as defined by 47 U.S.C. § 153(39). Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California and in the County of Los Angeles, and within this judicial district.

FACTUAL ALLEGATIONS

14. Beginning in or around February 2024, Defendant contacted Plaintiff on Plaintiff's cellular telephone number ending in -8342, in an attempt to solicit Plaintiff to purchase Defendant's services.

15. In or around February 2024, Plaintiff answered one such call and requested to be removed from Defendant's list and to stop calling him. Plaintiff was assured he would be taken of the list.

16. Despite this assurance Defendant continued to contact Plaintiff.

1 17. Despite Plaintiff's requests to be added to Defendant's do-not-call list,
2 Defendant continued to place calls to Plaintiff's cellular telephone without his
3 consent.

4 18. Defendant used an "automatic telephone dialing system" as defined
5 by 47 U.S.C. § 227(a)(1), and as prohibited by 47 U.S.C. § 227(b)(1)(A), to place
6 its calls to Plaintiff seeking to solicit its services.

7 19. Defendant's calls constituted calls that were not for emergency
8 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

9 20. Defendant's calls were placed to telephone number assigned to a
10 cellular telephone service for which Plaintiff incurs a charge for incoming calls
11 pursuant to 47 U.S.C. § 227(b)(1).

12 21. Upon information and belief, the automated phone calling system used
13 by Defendant to place calls has the capacity to store or produce telephone numbers
14 to be called, using a random or sequential number generator.

15 22. The calls placed to Plaintiff's cellular telephone were sent in an
16 automated fashion as a result of computerized campaigns that were pre-
17 programmed in advance to place calls to large groups of consumers all at once,
18 either sequentially or via algorithmic dialing, i.e. in an automated fashion by a
19 computer.

20 23. The autodialing platform uses an algorithm whereby a random or
21 sequential number generator, similar to a randomization formula or sequential
22 dialing formula, selects which number to dial from the stored list of numbers, and
23 sequences those numbers in order to automatically dial the numbers and place calls
24 en masse. Thus, a random or sequential number generator is used to both store the
25 numbers, and to produce the stored numbers from the list, via the campaign, to the
26 dialing platform itself.
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1 24. Undersigned counsel have studied the code used to program other
2 similarly-functioning autodialers in the past, with the assistance of software
3 engineers fluent in Java, and have found that such autodialers, when used in
4 automated mode, execute code that relies upon random or sequential number
5 generation to both store and produce numbers to be dialed by the dialer. For
6 instance, a common “parser” used in predictive dialers integrates the following
7 opensource Apache code into an autodialing dialing platform:

```
8        730 if (!this.recordList.isEmpty()) {  
9        731     this.recordNumber++;  
10       732     final String comment = sb == null ? null : sb.toString();  
11       733     result=newCSVRecord(this,this.recordList.toArray(Constants.E  
12       MPTY_STRING_ARRAY), comment,  
13       734         this.recordNumber, startCharPosition);  
14       735     }  
15       736     return result;  
16       737 }
```

17 25. These lines of code, and specifically the “++” in line 731, represent an
18 operator token that generates sequential numbers as part of a loop. This loop is
19 used to select which number from the CSV file will be dialed, and produce that
20 number to the dialer using a CSV parser. Such programs can dial thousands of
21 consumers in mere seconds, without any human intervention whatsoever. The
22 sequential number generator in the code above is executed in the process of mass
23 predictive dialing. The program cannot function, and therefore cannot dial any
24 phone numbers at all, without this sequential number generator.

25 26. Plaintiff alleges that Defendant used a dialing system with the similar
26 capacity to autodial numbers as shown above. Functionally, that is simply how
27 predictive dialing systems work. They rely on random or sequential number
28

1 generators to instruct the data set to produce telephone numbers to the dialer.
2 Without this key component, a dialing campaign would require an agent to
3 manually place the call, through organic decision making, or as was the case in
4 *Drugid v. Facebook*, through some other organic one-to-one triggering event that
5 instructs the dialer to place the call.

6 27. Plaintiff will not be able to demonstrate whether the code for
7 Defendant's dialing system contains such random or sequential number generators
8 without discovery and obtaining the code for the dialing platform. Plaintiff makes
9 these allegations on information and belief based on the volume of phone calls he
10 received, and that there were noticeable pauses between when he answered the call
11 and the agent began speaking, both of which are indicia of a predictive dialer.

12 28. The problem with these known realities is that because Plaintiff does
13 not and could not ever have access to Defendant's proprietary code, which is in its
14 sole possession, Plaintiff cannot allege with any more specificity that the system's
15 code contains such language. However, based on detailed discussions with experts
16 and years of litigation and expertise surrounding such technology, Plaintiff, and his
17 counsel, have a legitimate and sufficient good faith basis to make these allegations,
18 and assert that if the system is a traditional text blasting platform as alleged, *then it*
19 *will have some variation on the coding that is described herein*, which will
20 undoubtedly include either random or sequential number generators that are being
21 executed in conjunction with storing and dialing the telephone numbers, including
22 the dialing of Plaintiff's phone number.

23 29. The following is description, in plain English, of an automated dialer
24 typically operates: A dialer operator accesses a database of consumer contact
25 information, which is typically contained in a text delimited file, either in a CSV
26 file, text file, Microsoft Excel, or Microsoft Access file. In essence, this is a
27 spreadsheet, containing rows and columns of data, which includes telephone
28

1 numbers. The operator will load this data set into the dialing platform. The dialing
2 system will cut the data set into individual lines, unique to each telephone number
3 with an assigned row using a parser. Parsers will separate the data, and then index
4 the telephone numbers using either random or sequential number generators, but
5 most commonly sequential number generators. The program will then store the
6 telephone number using that number generator. The data is stored in temporary
7 cache or RAM memory, to be accessed by the dialer platform thereafter. A random
8 or sequential number generator is programmed to select and produce,
9 automatically, without any organic triggering event by a human being, the
10 telephone numbers, i.e. in accessing them from storage. Once the number generator
11 corresponds to a matching number in the stored list, that telephone number will be
12 “produced” from storage to the dialer, which then automatically dials that telephone
13 number. Thus, SMS blasters have the capacity to use random or sequential number
14 generators to both store and produce the telephone number to be automatically
15 dialed by the dialing program, without human intervention.

16 30. To illustrate this using a real-world example that was provided to
17 undersigned counsel by a software engineer who is fluent in Java and has reviewed
18 dialer code, imagine a list of numbers as a lengthy sheet of lined notebook paper.
19 A parser cuts this into strips, and stores it in a paper tray, which is attached to a
20 scanner. Each strip of paper has a row number, and a telephone number. The
21 scanner uses a program to generate numbers, either sequentially or randomly. That
22 generator is hooked to the paper feed, which instructs the scanner to match the
23 generated number, to the corresponding strip of paper in the tray, and then scan that
24 telephone number from the stored list, through the scanner, and out the other side,
25 at which time the scanner is dialing the telephone number on that strip of paper.
26 Now imagine a scanner that accomplishes this with a tray containing thousands of
27 pages of paper in the blink of an eye. Once the tray is empty, the dialing campaign
28 is complete.

1 31. No human intervention whatsoever exists in his process other than
2 pre-programming the parameters of the campaign, i.e. by inputting the numbers,
3 and selecting the times/dates that the campaign will take place.

4 32. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
5 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

6 33. Plaintiff requested that Defendant stop in response to multiple of
7 Defendant's telephone calls, thus revoking any prior express consent that had
8 existed and terminating any established business relationship that had existed, as
9 defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

10 34. Plaintiff's requests that Defendant stop calling him constitute a
11 request that he be placed on defendant's internal do-not-call list.

12 35. Upon information and belief and based on Plaintiff's experiences of
13 being contacted by Defendant after requesting they stop calling him, and at all
14 relevant times, Defendant does not maintain a written policy, available upon
15 demand, for maintain a do-not-call list, as required by 47 C.F.R. § 64.1200(d)(1).

16 36. Plaintiff further alleges that Defendant does not train its employees
17 who are engaged in telemarketing in the existence and use of any do-not-call list,
18 as required by 47 C.F.R. § 64.1200(d)(2).

19 37. On information and belief, Defendant failed to place Plaintiff on the
20 do-not-call list, despite his requires to no longer be called by Defendant. Instead,
21 Defendant continued to call to Plaintiff's cellular telephone, in violation of 47
22 C.F.R. § 64.1200(d)(3).

23 38. These calls by Defendant, or its agents, violated 47 U.S.C. §
24 227(b)(1).

25 **CLASS ACTION ALLEGATIONS**

26 39. Plaintiff brings this action on behalf of himself and on behalf of and
27 all others similarly situated, as a member of the three proposed Classes (hereafter,
28 jointly, "The Classes").

1 40. Plaintiff represents, and is a member of, the ATDS Class, defined as
2 follows: All persons within the United States who received any unsolicited
3 telephone calls sent using an automatic telephone dialing system or artificial voice
4 from Defendant, which telephone calls were not made for emergency purposes or
5 with the recipient's prior express consent within the four years prior to the filing of
6 the Complaint through the date of class certification.

7 41. Plaintiff represents, and is a member of, the National Do-Not-Call
8 Class (hereinafter "National DNC Class") defined as follows: All persons within
9 the United States registered on the National Do-Not-Call Registry for at least 30
10 days, who received more than one call by or on behalf of Defendant that promoted
11 Defendant's products or services within any twelve-month period, within four
12 years prior to the filing of this Complaint through the date of class certification.

13 42. Plaintiff represents, and is a member of, the Internal Do-Not-Call
14 Class (hereinafter "Internal DNC Class") defined as follows: All persons within the
15 United States who requested that Defendant stop calling them, and who, after
16 requesting Defendant stop calling them, received more than one call by or on
17 behalf of Defendant that promoted Defendant's products or services within any
18 twelve-month period, within four years prior to the filing of this Complaint through
19 the date of class certification.

20 43. Defendant, its employees and agents are excluded from the Classes.
21 Plaintiff does not know the number of members in the Classes, but believes the
22 Class members number in the thousands, if not more. Thus, this matter should be
23 certified as a Class action to assist in the expeditious litigation of this matter.

24 44. This suit seeks only damages and injunctive relief for recovery of
25 economic injury on behalf of the Classes, and it expressly is not intended to request
26 any recovery for personal injury and claims related thereto. Plaintiff reserves the
27 right to expand the Class definitions to seek recovery on behalf of additional
28 persons as warranted as facts are learned in further investigation and discovery.

1 45. The joinder of the Classes' members is impractical and the disposition
2 of their claims in the Class action will provide substantial benefits both to the
3 parties and to the court. The Classes can be identified through Defendant's records
4 or Defendant's agents' records.

5 46. Plaintiff and members of the ATDS Class were harmed by the acts of
6 Defendant in at least the following ways: Defendant, either directly or through their
7 agents, illegally contacted Plaintiff and the ATDS Class members via their cellular
8 telephones by using marketing telephone calls, thereby causing Plaintiff and the
9 ATDS Class members to incur certain cellular telephone charges or reduce cellular
10 telephone time for which Plaintiff and the ATDS Class members previously paid,
11 and invading the privacy of said Plaintiff and the Artificial Voice Class members.
12 Plaintiff and the ATDS Class members were damaged thereby.

13 47. There is a well-defined community of interest in the questions of law
14 and fact involved affecting the ATDS Class members. The questions of law and
15 fact common to the ATDS Class predominate over questions which may affect
16 individual ATDS Class members, including the following:

- 17 a) Whether, within the four years prior to the filing of this Complaint
18 through the date of class certification, Defendant or their agents placed
19 any telephone calls (other than a call made for emergency purposes or
20 made with the prior express consent of the called party) to an ATDS
21 Class member using any automatic telephone dialing system, or
22 artificial voice to any telephone number assigned to a cellular phone
23 service;
24 b) Whether Plaintiff and the ATDS Class members were damaged
25 thereby, and the extent of damages for such violations; and
26 c) Whether Defendant and their agents should be enjoined from
27 engaging in such conduct in the future.

28 48. As a person that received at least one solicitation call using an artificial
voice without Plaintiff's prior express consent, Plaintiff is asserting claims that are
typical of the ATDS Class. Plaintiff will fairly and adequately represent and protect

1 the interests of the ATDS Class in that Plaintiff has no interests antagonistic to any
2 member of the ATDS Class.

3 49. Plaintiff and members of the ATDS Revocation Class were harmed by
4 the acts of Defendant in at least the following ways: Defendant, either directly or
5 through their agents, illegally contacted Plaintiff and the ATDS Revocation Class
6 members via their cellular telephones by using marketing and telephone calls,
7 thereby causing Plaintiff and the ATDS Class members to incur certain cellular
8 telephone charges or reduce cellular telephone time for which Plaintiff and the
9 ATDS Revocation Class members previously paid, and invading the privacy of said
10 Plaintiff and the ATDS Revocation Class members. Plaintiff and the ATDS
11 Revocation Class members were damaged thereby.

12 50. There is a well-defined community of interest in the questions of law
13 and fact involved affecting the ATDS Revocation Class members. The questions
14 of law and fact common to the ATDS Revocation Class predominate over questions
15 which may affect individual ATDS Revocation Class members, including the
16 following:

- 17 a) Whether, within the four years prior to the filing of this Complaint
18 through the date of class certification, Defendant or their agents sent
19 any telemarketing/solicitation telephone calls (other than a calls made
20 for emergency purposes or made with the prior express consent of the
21 called party) to an ATDS Revocation Class member who had revoked
22 any prior express consent to be messaged using an automatic
23 telephone dialing system, or using any artificial voice to any telephone
24 number assigned to a cellular phone service;
- 25 b) Whether Plaintiff and the ATDS Revocation Class members were
26 damaged thereby, and the extent of damages for such violations; and
- 27 c) Whether Defendant and their agents should be enjoined from
28 engaging in such conduct in the future.

51. As a person that received numerous solicitation telephone calls from
Defendant using an artificial voice, after he had revoked any prior express consent,
Plaintiff is asserting claims that are typical of the ATDS Revocation Class. Plaintiff
will fairly and adequately represent and protect the interests of the ATDS

1 Revocation Class in that Plaintiff has no interests antagonistic to any member of
2 the ATDS Revocation Class.

3 52. Plaintiff and members of the National DNC Class were harmed by the
4 acts of Defendant in at least the following ways: Defendant illegally contacted
5 Plaintiff and National DNC Class members via their telephones for solicitation
6 purposes, thereby invading the privacy of said Plaintiff and the National DNC Class
7 members whose telephone numbers were on the National Do-Not-Call Registry.
8 Plaintiff and the National DNC Class members were damaged thereby.

9 53. There is a well-defined community of interest in the questions of law
10 and fact involved affecting the National DNC Class members. The questions of
11 law and fact common to the National DNC Class predominate over questions which
12 may affect individual National DNC Class members, including the following:

- 13 a) Whether, within the four years prior to the filing of this Complaint
14 through the date of class certification, Defendant or their agents placed
15 more than one telemarketing/solicitation calls to National DNC Class
16 members whose telephone numbers were on the National Do-Not-Call
17 Registry;
- 18 b) Whether Defendant maintains proper procedures and policies on the
19 use of do-not-call lists, as required by 47 C.F.R. § 64.1200;
- 20 c) Whether Plaintiff and the National DNC Class members were
21 damaged by Defendant's conduct, and the extent of damages for such
22 violations; and
- 23 d) Whether Defendant and their agents should be enjoined from
24 engaging in such conduct in the future.

25 54. As a person that received numerous solicitation calls from Defendant
26 within a 12-month period, and whose phone number was registered on the National
27 Do-Not-Call Registry, Plaintiff is asserting claims that are typical of the National
28 DNC Class. Plaintiff will fairly and adequately represent and protect the interests
of the National DNC Class in that Plaintiff has no interests antagonistic to any
member of the National DNC Class.

55. Plaintiff and members of the Internal DNC Class were harmed by the
acts of Defendant in at least the following ways: Defendant illegally contacted

1 Plaintiff and Internal DNC Class members via their telephones for solicitation
2 purposes, thereby invading the privacy of said Plaintiff and the Internal DNC Class
3 members who had requested that Defendant stop contacting them. Plaintiff and the
4 Internal DNC Class members were damaged thereby.

5 56. There is a well-defined community of interest in the questions of law
6 and fact involved affecting the Internal DNC Class members. The questions of law
7 and fact common to the Internal DNC Class predominate over questions which may
8 affect individual Internal DNC Class members, including the following:

- 9 a) Whether, within the four years prior to the filing of this Complaint
10 through the date of class certification, Defendant or their agents placed
11 more than one telemarketing/solicitation calls to Internal DNC Class
12 members who had previously requested that Defendant stop
13 contacting them;
14 b) Whether Defendant maintains proper procedures and policies on the
15 use of do-not-call lists, as required by 47 C.F.R. § 64.1200;
16 c) Whether Plaintiff and the Internal DNC Class members were damaged
17 by Defendant's conduct, and the extent of damages for such
18 violations; and
19 d) Whether Defendant and their agents should be enjoined from
20 engaging in such conduct in the future.

21 57. As a person that received numerous solicitation calls from Defendant
22 within a 12-month period, and who had previously requested that Defendant stop
23 contacting him, Plaintiff is asserting claims that are typical of the Internal DNC
24 Class. Plaintiff will fairly and adequately represent and protect the interests of the
25 Internal DNC Class in that Plaintiff has no interests antagonistic to any member of
26 the Internal DNC Class.

27 58. Plaintiff and the members of the Classes have suffered irreparable
28 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class
action, the Class members will continue to face the potential for irreparable harm.
In addition, these violations of law will be allowed to proceed without remedy and
Defendant will likely continue such illegal conduct. Because of the size of the

1 individual member's claims, few, if any, members of the Classes could afford to
2 seek legal redress for the wrongs complained of herein.

3 59. Plaintiff has retained counsel experienced in handling class action
4 claims and claims involving violations of the Telephone Consumer Protection Act.

5 60. A class action is a superior method for the fair and efficient
6 adjudication of this controversy. Class-wide damages are essential to induce
7 Defendant to comply with federal and California law. The interest of the Class
8 members in individually controlling the prosecution of separate claims against
9 Defendant are small because the maximum statutory damages in an individual
10 action for violation of privacy are minimal. Management of these claims is likely
11 to present significantly fewer difficulties than those presented in many class claims.

12 61. Defendant has acted on grounds generally applicable to the Classes,
13 thereby making appropriate final injunctive relief and corresponding declaratory
14 relief with respect to the Classes as a whole.

15
16 **FIRST CAUSE OF ACTION**
17 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
18 **47 U.S.C. § 227(B)**
19 **ON BEHALF OF THE ATDS CLASS AND ATDS REVOCATION CLASS**

20 62. Plaintiff incorporates by reference all of the above paragraphs of this
21 Complaint as though fully stated herein.

22 63. The foregoing acts and omissions of Defendant constitute numerous
23 and multiple negligent violations of the TCPA, including but not limited to each
24 and every one of the above-cited provisions of 47 U.S.C. § 227(b).

25 64. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b),
26 Plaintiff and ATDS Class and ATDS Revocation Class members are entitled to an
27 award of \$500.00 in statutory damages, for each and every violation, pursuant to
28 47 U.S.C. § 227(b)(3)(B).

1 65. Plaintiff and ATDS Class members are also entitled to and seek
2 injunctive relief prohibiting such conduct in the future.

3 **SECOND CAUSE OF ACTION**
4 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
5 **TELEPHONE CONSUMER PROTECTION ACT**
6 **47 U.S.C. § 227(B)**

7 **ON BEHALF OF THE ATDS CLASS AND ATDS REVOCATION CLASS**
8 **PLAINTIFF INCORPORATES BY REFERENCE ALL OF THE ABOVE PARAGRAPHS OF**
9 **THIS COMPLAINT AS THOUGH FULLY STATED HEREIN.**

10 66. The foregoing acts and omissions of Defendant constitute numerous
11 and multiple knowing and/or willful violations of the TCPA, including but not
12 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227(b).

13 67. As a result of Defendant's knowing and/or willful violations of 47
14 U.S.C. § 227(b), Plaintiff and the ATDS Class and ATDS Revocation Class
15 members are entitled to an award of \$1,500.00 in statutory damages, for each and
16 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

17 68. Plaintiff and the ATDS Class and ATDS Revocation Class members
18 are also entitled to and seek injunctive relief prohibiting such conduct in the future.

19 **THIRD CAUSE OF ACTION**
20 **NEGLIGENT VIOLATIONS OF THE**
21 **TELEPHONE CONSUMER PROTECTION ACT**
22 **47 U.S.C. § 227(c)**

23 **ON BEHALF OF THE NATIONAL DNC CLASS AND INTERNAL DNC CLASS**

24 69. Plaintiff incorporates by reference all of the above paragraphs of this
25 Complaint as though fully stated herein.

26 70. The foregoing acts and omissions of Defendant constitute numerous
27 and multiple negligent violations of the TCPA, including but not limited to each
28 and every one of the above-cited provisions of 47 U.S.C. § 227(c), and in particular
47 U.S.C. § 227(c)(5).

 71. As a result of Defendant's negligent violations of 47 U.S.C. § 227(c),
Plaintiff and the National DNC and Internal DNC Class members are entitled to an

1 award of \$500.00 in statutory damages, for each and every violation, pursuant to
2 47 U.S.C. § 227(c)(5)(B).

3 72. Plaintiff and the National DNC and Internal DNC Class members are
4 also entitled to and seek injunctive relief prohibiting such conduct in the future.

5 **FOURTH CAUSE OF ACTION**
6 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
7 **TELEPHONE CONSUMER PROTECTION ACT**
8 **47 U.S.C. § 227(c)**

9 **ON BEHALF OF THE NATIONAL DNC CLASS AND THE INTERNAL DNC CLASS**

10 73. Plaintiff incorporates by reference all of the above paragraphs of this
11 Complaint as though fully stated herein.

12 74. The foregoing acts and omissions of Defendant constitute numerous
13 and multiple knowing and/or willful violations of the TCPA, including but not
14 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227(c),
15 and in particular 47 U.S.C. § 227(c)(5).

16 75. As a result of Defendant's knowing and/or willful violations of 47
17 U.S.C. § 227(c), Plaintiff and the National DNC and Internal DNC Class members
18 are entitled to an award of \$1,500.00 in statutory damages, for each and every
19 violation, pursuant to 47 U.S.C. § 227(c)(5).

20 76. Plaintiff and the National DNC and Internal DNC Class members are
21 also entitled to and seek injunctive relief prohibiting such conduct in the future.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff, and
24 members of The Classes, the following relief against Defendant:

25 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
26 **THE TCPA, 47 U.S.C. § 227(B)**

- 27 • As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),
28 Plaintiff seeks for himself and each ATDS Class and ATDS Revocation
Class member \$500.00 in statutory damages, for each and every violation,
pursuant to 47 U.S.C. § 227(b)(3)(B).

- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION OF THE TCPA, 47 U.S.C. § 227(B)

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each ATDS Class and ATDS Revocation Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

THIRD CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF THE TCPA, 47 U.S.C. § 227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(c)(5), Plaintiff seeks for himself and each National DNC and Internal DNC Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).
- Pursuant to 47 U.S.C. § 227(c)(5)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

FOURTH CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION OF THE TCPA, 47 U.S.C. § 227(c)

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c)(5), Plaintiff seeks for himself and each National DNC and Internal DNC Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B) and 47 U.S.C. § 227(c)(5)(C).
- Pursuant to 47 U.S.C. § 227(c)(5)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

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TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: April 29, 2024

Respectfully submitted,

THE LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
TODD M. FRIEDMAN, ESQ.
ATTORNEY FOR PLAINTIFF